

# *Exhibit 1*

*to DEFENDANT EIGHTSTAR DIAMOND COMPANY'S MEMORANDUM IN OPPOSITION  
TO PLAINTIFF'S MOTION TO DISMISS  
United States District Court District of Massachusetts Cause No. 04-12258-JLT*



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**Typed Drawing**

**Word Mark** THE WORLD'S MOST PERFECTLY CUT DIAMOND  
**Goods and Services** IC 035. US 100 101 102. G & S: Retail store services in the field of diamonds; online retail store services in the field of diamonds. FIRST USE: 19970101. FIRST USE IN COMMERCE: 19970101  
**Mark Drawing Code** (1) TYPED DRAWING  
**Serial Number** 78078312  
**Filing Date** August 8, 2001  
**Current Filing Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** December 3, 2002  
**Supplemental Register Date** September 18, 2002  
**Owner** (APPLICANT) Hearts on Fire Company CORPORATION DELAWARE 99 Summer Street, Fourth floor Boston MASSACHUSETTS 02110  
**Attorney of Record** Gailyc C. Sonia  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CUT DIAMOND" APART FROM THE MARK AS SHOWN  
**Type of Mark** SERVICE MARK  
**Register** PRINCIPAL-2(F)

**Live/Dead  
Indicator****LIVE**

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**Serial Number:** 78078312

**Registration Number:** (NOT AVAILABLE)

**Mark (words only):** THE WORLD'S MOST PERFECTLY CUT DIAMOND

**Standard Character claim:** No

**Current Status:** Final review prior to publication has been completed, application will be published for opposition.

**Date of Status:** 2004-12-27

**Filing Date:** 2001-08-08

**The Information will be/was published in the Official Gazette on** 2005-02-08

**Transformed into a National Application:** No

**Registration Date:** (DATE NOT AVAILABLE)

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 111

**Attorney Assigned:**

HUGHITT ELIZABETH A Employee Location

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2004-12-27

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. Hearts on Fire Company

**Address:**

Hearts on Fire Company  
99 Summer Street, Fourth floor  
Boston, MA 02110  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Delaware

**Phone Number:** N.A.

**GOODS AND/OR SERVICES**

---

**International Class: 035**

Retail store services in the field of diamonds; online retail store services in the field of diamonds

**First Use Date:** 1997-01-01

**First Use in Commerce Date:** 1997-01-01

**Basis:** 1(a)

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**ADDITIONAL INFORMATION**

---

**Disclaimer:** "CUT DIAMOND"

**Section 2(f)**

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**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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2005-01-19 - Notice of publication

2004-11-05 - Law Office Publication Review Completed

2004-10-06 - Assigned To LIE

2004-09-28 - Approved for Pub - Principal Register (Initial exam)

2004-09-28 - EXAMINERS AMENDMENT E-MAILED

2004-09-28 - Examiners Amendment -Written

2004-09-28 - Case file assigned to examining attorney

2004-09-28 - Previous allowance count withdrawn

2004-09-28 - Case file assigned to examining attorney

2004-07-16 - PAPER RECEIVED

2004-04-26 - Case file assigned to examining attorney

2004-02-02 - TEAS Change of Correspondence Received

2003-05-20 - Opposition instituted for Proceeding

2003-01-07 - Extension Of Time To Oppose Received

2002-12-03 - Published for opposition

2002-11-13 - Notice of publication

2002-09-24 - Approved for Pub - Principal Register (Initial exam)

2002-09-19 - Examiner's amendment mailed

2002-07-15 - Non-final action mailed

2002-07-14 - Amendment to Use approved

2002-05-29 - Amendment to use processing complete

2002-03-25 - Amendment to Use filed

2002-03-25 - Communication received from applicant

2002-03-29 - Communication received from applicant

2002-03-25 - PAPER RECEIVED

2001-09-29 - Non-final action mailed

2001-09-25 - Case file assigned to examining attorney

2001-09-19 - Case file assigned to examining attorney

---

#### CORRESPONDENCE INFORMATION

---

**Correspondent**

Gailyc C. Sonia (Attorney of record)

GAILYC C. SONIA  
HEARTS ON FIRE COMPANY  
99 SUMMER STREET, 4TH FLOOR  
BOSTON, MA 02110

**Phone Number:** 617-523-5588

**Fax Number:** 617-523-1437

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**Typed Drawing**

**Word Mark** THE MOST PERFECTLY CUT DIAMOND IN THE WORLD  
**Goods and Services** IC 035. US 100 101 102. G & S: Retail store services in the field of diamonds; online retail store services in the field of diamonds; wholesale distributorship services in the field of diamonds; wholesale stores featuring diamonds. FIRST USE: 19970101. FIRST USE IN COMMERCE: 19970101

**Mark Drawing Code** (1) TYPED DRAWING  
**Serial Number** 78078313  
**Filing Date** August 8, 2001  
**Current Filing Basis** 1A  
**Original Filing Basis** 1B  
**Supplemental Register Date** September 18, 2002  
**Owner** (APPLICANT) Hearts on Fire Company CORPORATION DELAWARE 99 SUMMER STREET, 4TH FLOOR Boston MASSACHUSETTS 02110  
**Attorney of Record** GAILY C. SONIA  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CUT DIAMOND" APART FROM THE MARK AS SHOWN  
**Type of Mark** SERVICE MARK  
**Register** PRINCIPAL-2(F)  
**Live/Dead**

Indicator **LIVE**

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**Serial Number:** 78078313

**Registration Number:** (NOT AVAILABLE)

**Mark (words only):** THE MOST PERFECTLY CUT DIAMOND IN THE WORLD

**Standard Character claim:** No

**Current Status:** Final review prior to publication has been completed, application will be published for opposition.

**Date of Status:** 2004-12-21

**Filing Date:** 2001-08-08

**The Information will be/was published in the Official Gazette on 2005-02-01**

**Transformed into a National Application:** No

**Registration Date:** (DATE NOT AVAILABLE)

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 111

**Attorney Assigned:**

HUGHITT ELIZABETH A Employee Location

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2004-12-21

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. Hearts on Fire Company

**Address:**

Hearts on Fire Company  
99 SUMMER STREET, 4TH FLOOR  
Boston, MA 02110  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Delaware

**Phone Number:** N.A.

**GOODS AND/OR SERVICES**

---

**International Class: 035**

Retail store services in the field of diamonds; online retail store services in the field of diamonds; wholesale distributorship services in the field of diamonds; wholesale stores featuring diamonds

**First Use Date: 1997-01-01****First Use in Commerce Date: 1997-01-01****Basis: 1(a)**

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**ADDITIONAL INFORMATION**

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**Disclaimer: "CUT DIAMOND"****Section 2(f)**

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**MADRID PROTOCOL INFORMATION**

---

**(NOT AVAILABLE)**

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**PROSECUTION HISTORY**

---

2005-01-12 - Notice of publication

2004-11-05 - Law Office Publication Review Completed

2004-10-06 - Assigned To LIE

2004-10-06 - Assigned To LIE

2004-09-28 - Approved for Pub - Principal Register (Initial exam)

2004-09-28 - EXAMINERS AMENDMENT E-MAILED

2004-09-28 - Examiners Amendment -Written

2004-09-28 - Case file assigned to examining attorney

2004-09-28 - Previous allowance count withdrawn

2004-09-28 - Case file assigned to examining attorney

2004-07-16 - PAPER RECEIVED

2004-04-26 - Case file assigned to examining attorney

2004-02-02 - TEAS Change of Correspondence Received

2003-05-20 - Opposition instituted for Proceeding

2003-01-07 - Extension Of Time To Oppose Received  
2002-12-03 - Published for opposition  
2002-11-13 - Notice of publication  
2002-09-24 - Approved for Pub - Principal Register (Initial exam)  
2002-09-24 - Amendment to Use approved  
2002-09-19 - Examiner's amendment mailed  
2002-07-15 - Disapproval of Amendment to use mailed  
2002-03-29 - Communication received from applicant  
2002-05-16 - Amendment to use processing complete  
2002-03-25 - Amendment to Use filed  
2002-03-25 - Communication received from applicant  
2002-03-25 - PAPER RECEIVED  
2001-09-29 - Non-final action mailed  
2001-09-25 - Case file assigned to examining attorney  
2001-09-19 - Case file assigned to examining attorney

---

#### CORRESPONDENCE INFORMATION

---

**Correspondent**

GAILYC C. SONIA (Attorney of record)

GAILYC C. SONIA  
HEARTS ON FIRE COMPANY  
99 SUMMER STREET, 4TH FLOOR  
BOSTON, MA 02110

**Phone Number:** 617-523-5588

**Fax Number:** 617-523-1437

---

## *Exhibit 2*

*to DEFENDANT EIGHTSTAR DIAMOND COMPANY'S MEMORANDUM IN OPPOSITION  
TO PLAINTIFF'S MOTION TO DISMISS  
United States District Court District of Massachusetts Cause No. 04-12258-JLT*



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**Typed Drawing**

<b>Word Mark</b>	THE MOST PERFECTLY CUT DIAMOND IN THE WORLD
<b>Goods and Services</b>	IC 014. US 002 027 028 050. G & S: Gemstones, namely cut diamonds. FIRST USE: 19970101. FIRST USE IN COMMERCE: 19970101
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	78078314
<b>Filing Date</b>	August 8, 2001
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	January 21, 2003
<b>Owner</b>	(APPLICANT) Hearts on Fire Company CORPORATION DELAWARE 333 Washington Street, Suite 851 Boston MASSACHUSETTS 021085111
<b>Attorney of Record</b>	GAILYC C. SONIA
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CUT DIAMOND" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL-2(F)
<b>Live/Dead Indicator</b>	LIVE

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**Serial Number:** 78078314

**Registration Number:** (NOT AVAILABLE)

**Mark (words only):** THE MOST PERFECTLY CUT DIAMOND IN THE WORLD

**Standard Character claim:** No

**Current Status:** An opposition is now pending at the Trademark Trial and Appeal Board.

**Date of Status:** 2004-02-27

**Filing Date:** 2001-08-08

**Transformed into a National Application:** No

**Registration Date:** (DATE NOT AVAILABLE)

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 112

**Attorney Assigned:**

FAIRBANKS RONALD L Employee Location

**Current Location:** 845 -TTAB

**Date In Location:** 2004-11-17

---

#### LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. Hearts on Fire Company

**Address:**

Hearts on Fire Company  
333 Washington Street, Suite 851  
Boston, MA 021085111  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Delaware

**Phone Number:** N.A.

---

#### GOODS AND/OR SERVICES

---

**International Class:** 014

Gemstones, namely cut diamonds

**First Use Date:** 1997-01-01

**First Use in Commerce Date:** 1997-01-01

**Basis:** 1(a)

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#### ADDITIONAL INFORMATION

---

**Disclaimer:** "CUT DIAMOND"

**Section 2(f)**

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#### MADRID PROTOCOL INFORMATION

---

(NOT AVAILABLE)

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#### PROSECUTION HISTORY

---

2004-07-16 - PAPER RECEIVED

2004-02-11 - Registration canceled - Restored to pendency

2004-02-02 - TEAS Change of Correspondence Received

2003-07-29 - Registered - Principal Register

2003-05-20 - Opposition instituted for Proceeding

2003-02-11 - Extension Of Time To Oppose Received

2003-01-21 - Published for opposition

2003-01-01 - Notice of publication

2002-11-18 - Approved for Pub - Principal Register (Initial exam)

2002-09-19 - Communication received from applicant

2002-09-19 - PAPER RECEIVED

2002-06-07 - Unresponsive paper received

2002-06-06 - NON-FINAL ACTION E-MAILED

2002-06-06 - Amendment to Use approved

2002-04-23 - Amendment to use processing complete

2002-03-25 - Amendment to Use filed

2002-03-25 - PAPER RECEIVED

2002-03-25 - Communication received from applicant

2002-03-25 - PAPER RECEIVED

2001-09-25 - Non-final action mailed

2001-09-17 - Case file assigned to examining attorney

---

#### CORRESPONDENCE INFORMATION

---

**Correspondent**

GAILY C. SONIA (Attorney of record)

GAILY C. SONIA  
HEARTS ON FIRE COMPANY  
99 SUMMER STREET, 4TH FLOOR  
BOSTON, MA 02110

**Phone Number:** 617-523-5588

**Fax Number:** 617-523-1437

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**Typed Drawing**

**Word Mark** THE WORLD'S MOST PERFECTLY CUT DIAMOND  
**Goods and Services** IC 014. US 002 027 028 050. G & S: Gemstones, namely cut diamonds. FIRST USE: 19970101. FIRST USE IN COMMERCE: 19970101  
**Mark Drawing Code** (1) TYPED DRAWING  
**Serial Number** 78078235  
**Filing Date** August 8, 2001  
**Current Filing Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** April 8, 2003  
**Owner** (APPLICANT) Hearts on Fire Company CORPORATION DELAWARE 333 Washington Street, Suite 851 Boston MASSACHUSETTS 021085111  
**Attorney of Record** GAILYC C SONIA  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CUT DIAMOND" APART FROM THE MARK AS SHOWN  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL-2(F)  
**Live/Dead Indicator** LIVE

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**Serial Number:** 78078235

**Registration Number:** (NOT AVAILABLE)

**Mark (words only):** THE WORLD'S MOST PERFECTLY CUT DIAMOND

**Standard Character claim:** No

**Current Status:** An opposition is now pending at the Trademark Trial and Appeal Board.

**Date of Status:** 2003-05-06

**Filing Date:** 2001-08-08

**Transformed into a National Application:** No

**Registration Date:** (DATE NOT AVAILABLE)

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 112

**Attorney Assigned:**

GASKINS TONJA M Employee Location

**Current Location:** M3D -TMO Law Office 112 - Docket Clerk

**Date In Location:** 2005-01-04

---

#### LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. Hearts on Fire Company

**Address:**

Hearts on Fire Company  
333 Washington Street, Suite 851  
Boston, MA 021085111  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Delaware

**Phone Number:** N.A.

---

#### GOODS AND/OR SERVICES

---

**International Class:** 014

Gemstones, namely cut diamonds

**First Use Date:** 1997-01-01

**First Use in Commerce Date:** 1997-01-01

**Basis:** 1(a)

---

#### ADDITIONAL INFORMATION

---

**Disclaimer:** "CUT DIAMOND"

**Section 2(f)**

---

#### MADRID PROTOCOL INFORMATION

---

(NOT AVAILABLE)

---

#### PROSECUTION HISTORY

---

2004-07-16 - PAPER RECEIVED

2004-02-02 - TEAS Change of Correspondence Received

2003-05-06 - Opposition instituted for Proceeding

2003-04-29 - Opposition papers filed

2003-04-08 - Published for opposition

2003-03-19 - Notice of publication

2002-11-21 - Approved for Pub - Principal Register (Initial exam)

2002-09-19 - Communication received from applicant

2002-09-19 - PAPER RECEIVED

2002-07-02 - Non-final action mailed

2002-07-01 - Amendment to Use approved

2002-03-25 - Section 1(a) claim - Added

2002-05-01 - Amendment to use processing complete

2002-03-25 - Amendment to Use filed

2002-03-26 - Communication received from applicant

2002-03-25 - PAPER RECEIVED

2001-09-26 - Non-final action mailed

2001-09-17 - Case file assigned to examining attorney

---

#### CORRESPONDENCE INFORMATION

---

**Correspondent**

GAILYC C SONIA (Attorney of record)

GAILYC C. SONIA  
HEARTS ON FIRE COMPANY  
99 SUMMER ST., 4TH FLOOR  
BOSTON, MA 02110

**Phone Number:** 617-523-5588

**Fax Number:** 617-523-1437

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**Typed Drawing**

**Word Mark** THE WORLD'S MOST PERFECTLY CUT DIAMOND  
**Goods and Services** IC 035. US 100 101 102. G & S: Wholesale distributorship services in the field of diamonds; wholesale stores featuring diamonds. FIRST USE: 19970101. FIRST USE IN COMMERCE: 19970101

**Mark Drawing Code** (1) TYPED DRAWING

**Serial Number** 78078237

**Filing Date** August 8, 2001

**Current Filing Basis** 1A

**Original Filing Basis** 1B

**Published for Opposition** January 14, 2003

**Owner** (APPLICANT) Hearts on Fire Company CORPORATION DELAWARE 333 Washington Street, Suite 851 Boston MASSACHUSETTS 021085111

**Attorney of Record** Timothy H. Hiebert

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CUT DIAMOND" APART FROM THE MARK AS SHOWN

**Type of Mark** SERVICE MARK

**Register** PRINCIPAL-2(F)

**Live/Dead Indicator** LIVE

---

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**Serial Number:** 78078237

**Registration Number:** (NOT AVAILABLE)

**Mark (words only):** THE WORLD'S MOST PERFECTLY CUT DIAMOND

**Standard Character claim:** No

**Current Status:** An opposition is now pending at the Trademark Trial and Appeal Board.

**Date of Status:** 2003-05-20

**Filing Date:** 2001-08-08

**Transformed into a National Application:** No

**Registration Date:** (DATE NOT AVAILABLE)

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 102

**Attorney Assigned:**

WEBSTER WILLIAM M Employee Location

**Current Location:** 845 -TTAB

**Date In Location:** 2004-11-17

---

#### **LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. Hearts on Fire Company

**Address:**

Hearts on Fire Company  
333 Washington Street, Suite 851  
Boston, MA 021085111  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Delaware

**Phone Number:** N.A.

---

#### **GOODS AND/OR SERVICES**

---

**International Class:** 035

Wholesale distributorship services in the field of diamonds; wholesale stores featuring diamonds

**First Use Date:** 1997-01-01

**First Use in Commerce Date:** 1997-01-01

**Basis:** 1(a)

---

#### ADDITIONAL INFORMATION

---

**Disclaimer:** "CUT DIAMOND"

**Section 2(f)**

---

#### MADRID PROTOCOL INFORMATION

---

(NOT AVAILABLE)

---

#### PROSECUTION HISTORY

---

2004-07-16 - PAPER RECEIVED

2004-02-02 - TEAS Change of Correspondence Received

2003-05-20 - Opposition instituted for Proceeding

2003-02-24 - Extension Of Time To Oppose Received

2003-01-14 - Published for opposition

2002-12-25 - Notice of publication

2002-10-21 - Approved for Pub - Principal Register (Initial exam)

2002-10-16 - Amendment to Use approved

2002-10-07 - Case file assigned to examining attorney

2002-10-04 - Amendment to use processing complete

2002-09-19 - Amendment to Use filed

2002-09-19 - Communication received from applicant

2002-09-19 - PAPER RECEIVED

2002-08-13 - Non-final action mailed

2002-05-17 - Communication received from applicant

2002-03-25 - Communication received from applicant

2002-03-25 - PAPER RECEIVED

2001-11-20 - Non-final action mailed

2001-11-01 - Case file assigned to examining attorney

2001-08-21 - Communication received from applicant

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#### CORRESPONDENCE INFORMATION

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